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LUA & MANSOR v. TAN AH KIM

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
IDRUS HARUN JCA
MARY LIM J
B [CIVIL APPEAL NO: C-02(NCVC)(A)-640-04-2015]
1 DECEMBER 2016

CIVIL PROCEDURE: *Judgments and orders – Taxation order – Taxation order for bill of costs – Claim for ancillary reliefs – Client refused to pay counsel certain*
C *percentage of value of properties or payments under relief ordered – Whether contingency fees – Client filed petition to tax bill of costs after two and half years from delivery – Whether taxation order made within time – Whether bill of costs premised on agreed fees and should not be taxed – Whether taxation order ultra vires s. 117(3) and in contravention of ss. 126 and 128 of Legal Profession Act 1976*

D

The respondent ('defendant') appointed the appellant's ('plaintiff') firm to represent her in claiming for ancillary reliefs stemming from a divorce proceeding. A consent order was recorded by the High Court and the defendant obtained properties, car and cash estimated to be worth of RM1.74 million. From the date of appointment to the date of recording of
E the consent order, the defendant paid RM7,000 as fees to the plaintiff. The defendant refused to pay 15% of the value of the property or payments under relief ordered in addition to her fees, which was a term contained in the plaintiff's letter of appointment. The plaintiff issue a detailed bill of costs ('the BOC') but the defendant refused to pay the same, alleging that they were
F contingency fees. Following a negotiation, the BOC was revised and reduced from RM381,318.29 to RM261,062.20. The defendant made payments totalling to RM52,000 and filed a petition to tax the BOC at the High Court two and a half years after the delivery of the second BOC. The taxation was allowed. This prompted the plaintiff to file collateral proceedings at the High
G Court to set aside the taxation order on the grounds that (i) the said order was *ultra vires* s. 117(3) of the Legal Profession Act 1976 ('LPA') as the BOC was premised on agreed fees and should not be taxed; (ii) the said order was made out of time, in contravention of ss. 126 and 128 of the LPA; and (iii) the defendant had already paid part of the BOC, signifying admittance of debt.
H The collateral proceedings were dismissed by the Judicial Commissioner ('JC') on the ground that, *inter alia*, the plaintiff had not appealed against the decision for taxation and had in fact actively participated in the taxation proceedings. Hence, the present appeal.

Held (allowing appeal with costs; setting aside taxation order of High
I **Court)**
Per Rohana Yusuf JCA delivering the judgment of the court:

(1) There was a clear agreement between the plaintiff and the defendant on the fees *vide* the letter of appointment of the plaintiff by the defendant. Under s. 117(3) of the LPA, the agreed costs made pursuant to s. 116

shall not be subjected to taxation. Therefore, the taxation order made on the agreed fees pursuant to s. 116 would be in contravention of s. 117(3) of the LPA. The JC erred in allowing agreed costs under s. 116 of the LPA to be taxed in the first place. (para 19)

(2) Section 126 of the LPA sets out the time limit of six months from the delivery of a BOC for taxation. No order for taxation should be made after expiration of that period except under special circumstances and this is set out under s. 128(1) of the LPA. In any event, no taxation order shall be made after the expiry of one year as provided in s. 128(2) of the LPA. The petition by the defendant on the second BOC was made two years, six months and nine days after the second BOC was delivered to her. It was never the defendant's case that the taxation order made by the JC, though out of stipulated time, could be justified on the ground of special circumstances. This was a case of a client who agreed to pay fees which were certain and then reneged on her own words after succeeding in her claim. (paras 21 & 25)

(3) The participation of the plaintiff in the proceedings could not validate an invalid order. It was axiomatic that the plaintiff had to obey any order of a court no matter how defective or bad until it was set aside. This was premised on the underlying principle of duty of obedience and it was not for the plaintiff to decide for himself that any order of the court was wrongly issued. Failure to obey ran the risk of contempt. (para 26)

Bahasa Malaysia *Headnotes*

Responden ('defendan') melantik firma perayu ('plaintif') untuk mewakilinya dalam tuntutan relief sampingan susulan satu prosiding perceraian. Perintah persetujuan direkodkan oleh Mahkamah Tinggi dan defendan memperoleh hartanah-hartanah, kereta dan wang tunai yang dianggarkan bernilai RM1.74 juta. Dari tarikh pelantikan hingga tarikh rekod perintah persetujuan, defendan membayar fi sebanyak RM7,000 kepada plaintif. Defendan enggan membayar 15% daripada nilai hartanah atau bayaran bawah relief yang diperintahkan selain fi, satu terma yang terkandung dalam surat pelantikan plaintif. Plaintif mengeluarkan bil kos ('BK') terperinci tetapi defendan enggan membayar dengan mendalihkan bahawa kesemuanya fi luar jangka. Berikutan satu rundingan, BK disemak dan dikurangkan daripada RM381,318.29 kepada RM261,062.20. Defendan membuat beberapa bayaran berjumlah RM52,000 dan memfailkan petisyen untuk mencukai BK di Mahkamah Tinggi dua setengah tahun selepas penyerahan BK kedua. Pencukaian dibenarkan. Ini mendorong plaintif memfailkan prosiding kolateral di Mahkamah Tinggi untuk mengetepikan perintah pencukaian atas alasan (i) perintah tersebut *ultra vires* s. 117(2) Akta Profesion Undang-Undang 1976 ('APUU') kerana BK adalah berdasarkan fi yang disetujui dan tidak sepatutnya dicukai; (ii) perintah pencukaian dibuat melebihi had masa,

A bertentangan dengan ss. 126 dan 128 APUU; dan (iii) defendan ada membayar sebahagian BK dan ini menunjukkan akuan hutang. Prosiding kolateral ditolak oleh Mahkamah Tinggi atas alasan, antara lain, plaintif tidak merayu terhadap keputusan pencukaian malah mengambil bahagian secara aktif dalam prosiding pencukaian. Oleh itu, timbul rayuan ini.

B **Diputuskan (membenarkan rayuan dengan kos; mengetepikan perintah pencukaian Mahkamah Tinggi)**
Oleh Rohana Yusuf HMR menyampaikan penghakiman mahkamah:

(1) Terdapat perjanjian jelas antara plaintif dan defendan tentang fi dalam surat pelantikan plaintif oleh defendan. Di bawah s. 117(3) APUU, kos disetujui yang dibuat di bawah s. 116 tidak boleh tertakluk pada pencukaian. Oleh itu, perintah pencukaian terhadap fi di bawah s. 116 bercanggah dengan s. 117(3) APUU. Dari awal lagi, Pesuruhjaya Kehakiman terkhilaf dalam membenarkan kos yang disetujui di bawah s. 116 APUU dicukaikan.

(2) Seksyen 126 APUU menyatakan had masa enam bulan dari tarikh BK untuk pencukaian. Perintah pencukaian tidak boleh dibuat selepas luput tempoh tersebut kecuali di bawah hal-hal keadaan istimewa dan ini dinyatakan di bawah s. 128(1) APUU. Dalam apa jua keadaan, perintah pencukaian tidak boleh dibuat selepas luput satu tahun, seperti yang diperuntukkan di bawah s. 128(2) APUU. Petisyen defendan terhadap BK kedua dibuat dua tahun, enam bulan dan sembilan hari selepas BK diserahkan kepadanya. Defendan tidak pernah menghujahkan bahawa perintah pencukaian oleh PK, walaupun di luar masa, boleh dijustifikasikan berasaskan hal-hal keadaan istimewa. Anak guam dalam kes ini bersetuju membayar fi yang ditetapkan dan kemudian memungkiri janjinya sendiri selepas tuntutannya berjaya.

(3) Tindakan plaintif mengambil bahagian dalam prosiding tidak mengesahkan perintah yang tidak sah. Tidak boleh disangkal bahawa plaintif perlu mematuhi apa-apa perintah mahkamah walaupun cacat atau tidak dapat diterima hinggalah perintah tersebut diketepikan. Ini berdasarkan prinsip asas kewajipan untuk patuh dan plaintif tidak boleh memutuskan untuk dirinya sendiri bahawa apa-apa perintah mahkamah tersalah keluar. Gagal mematuhinya berisiko menghina mahkamah.

H **Case(s) referred to:**
Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Chai Chee Chin & Ors lwn. Tetuan Zahari Ong & Co [2006] 8 CLJ 84 HC ***(refd)***
Phuah Choon Hwang & Ors v. Hassan & Kong Yeam [1986] 1 CLJ 513; [1986] CLJ (Rep) 579 HC ***(refd)***
I *Symbol Park Lane v. Steggles Palmer (a firm) [1985] 2 All ER 167* ***(refd)***
Tan Tek Sin & Anor v. Tetuan Nora Hayati & Associates (sued as a firm) [2015] 1 CLJ 89 CA ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***

Legislation referred to:
Evidence Act 1950, s. 44
Legal Profession Act 1976, ss. 116, 117(3), 126, 128(1), (2)

Solicitors Act 1974 [UK], s. 70(3)

For the appellant - Lua Kok Hiyong; M/s Lua & Mansor
For the respondent - Francis Tan; M/s Rosni Francis Tan & Ho

[Editor's note: Appeal from High Court, Temerloh; Originating Summons No: 24NCVC-210-12-2014 (overruled).]

Reported by Najib Tamby

JUDGMENT

Rohana Yusuf JCA:

[1] In the High Court at Temerloh the appellant/plaintiff had applied to set aside a taxation order dated 14 July 2014 (taxation order). His application was dismissed. Dissatisfied with that decision he filed an appeal to this court. We had on 16 February 2016, allowed the appeal of the appellant and set aside the taxation order made by the learned trial judge. We set out below the reasons for our decision.

[2] We will refer to the parties as they were referred to, at the High Court.

[3] The impugned taxation order was made by the High Court relating to divorce proceedings of the defendant. In that divorce proceedings at the Temerloh High Court, the defendant's husband had petitioned for a divorce against her and a *decree nisi* dated 21 October 2009 was granted. The defendant however, did not seek for any ancillary reliefs in that divorce proceedings.

[4] The defendant then by way of a letter dated 19 January 2010 (at pp. 66 to 67 of rekod rayuan jilid III) appointed the plaintiff's firm to represent her to claim for ancillary reliefs against her ex-husband. The letter of appointment states the agreed fees in the following terms:

> The following is the agreed fee exclusive of disbursement for filings, transportation etc:
>
> (i) application for leave: RM5,000.00
>
> (ii) application for ancillary relief proper i.e. for maintenance and sharing of assets - RM20,000.00. If the court granted order against my ex-husband for any ancillary relief, I agree to pay 15% of my portions of the value of the property or payments under relief ordered in additional to the above fee.

[5] The plaintiff succeeded in obtaining leave from the Temerloh High Court to file for the ancillary reliefs and proceeded to make claims for the defendant against her husband. The defendant's husband lodged an appeal against the said leave to the Court of Appeal but it was dismissed. Leave application was made to appeal to the Federal Court.

[6] Pending the hearing of the leave application, on 12 November 2010 both the defendant and her husband recorded consent judgment at Temerloh High Court on the ancillary reliefs. The consent order is as found at pp. 69-71 rekod rayuan jilid III. By that consent order, the defendant had obtained properties, car and cash estimated to be worth RM1.74 million. This estimated value was an estimate made by the defendant herself. The consent order had already been effected and the defendant had already received all the assets, cash and car as per the consent order.

[7] From the date of his appointment on 19 January 2010, up to the consent order obtained on 12 November 2010 the defendant had paid a total of RM7,000 as fees to the plaintiff. Out of this payment, RM2,000 was for disbursements and RM5,000 was for the agreed fees at leave stage.

[8] The defendant refused to pay the other part of the agreed fees and insisted for the plaintiff to issue a detailed bill of costs, which the plaintiff did. The bill of costs dated 30 December 2012 billed the defendant a sum of RM381,318.29 as costs inclusive of litigation fees at all levels, conveyancing fees for the transfer of two properties, as well as disbursements. The plaintiff intimated to the defendant in the said bill that there was also an agreed success fees of RM261,000 premised upon 15% of the total value of the properties received by the defendant.

[9] The defendant refused to pay the bill of costs. Instead, she alleged that the fees charged by the plaintiff were contingency fees and threatened to lodge a disciplinary complaint. A disciplinary complaint was indeed lodged by the defendant against the plaintiff pursuant to the Legal Profession Act 1976 (LPA). The disciplinary committee, after investigating the complaint against the plaintiff, recommended for the complaint to be dismissed. Following that, the disciplinary board dismissed the complaint against the plaintiff on 13 February 2015.

[10] The defendant having failed to pay the first bill of costs of RM381,318.29 then negotiated for a revision. The plaintiff reduced the amount to RM261,062.20 as shown in the second bill of costs dated 3 June 2011 (see pp. 96-119 rekod rayuan jilid III). The first bill of costs was revoked as clearly stated in the letter by the plaintiff at pp. 120-121 rekod rayuan jilid III.

[11] The defendant made further payments which finally totalled to RM52,000 as disbursements and part fees. On 12 July 2011, one month after delivery of the second bill of costs, the plaintiff filed a suit to recover the balance at the Temerloh Sessions Court. The defendant however, did not

attend court on the mentioned date and judgment in default was entered against her. The judgment in default was subsequently set aside by the Court of Appeal on 28 November 2013.

[12] Meanwhile, on 26 August 2011 which was about six weeks after the plaintiff filed the Sessions Court suit, the defendant through Messrs Cheah Teh & Su filed a petition to tax the bill of costs at Kuala Lumpur High Court (KLHC) *vide* Petition No: 26NCVC-4-09-2011. The KLHC pointed out that the defendant had filed for taxation in the wrong court and that the right court would be the appellate and special powers division of the KLHC or the Temerloh High Court, where the divorce proceedings were conducted. The defendant then withdrew the petition at the KLHC with liberty to file it afresh.

[13] The defendant filed another petition for taxation on 12 December 2013 at the Temerloh High Court. By this time, it was already over two and a half years from the time the second bill of costs was delivered to the defendant on 3 June 2011. The learned trial judge proceeded to allow taxation and granted an order for the bill to be taxed. The plaintiff did participate in the taxation proceedings.

[14] The plaintiff filed an appeal against the taxation order but was one day late purportedly due to Hari Raya break. An extension of time applied by the plaintiff to lodge an appeal was dismissed.

[15] The plaintiff then filed these collateral proceedings at the Temerloh High Court to set aside the taxation order *vide* Originating Summons 24NCVC-210-12-2014. The application was grounded on the basis that: the taxation order made by the learned Judicial Commissioner (JC) is *ultra vires* s. 117(3) of the LPA by virtue of the fact that the bill of costs is premised on agreed fees and should not be taxed; that the taxation order is made out of time in contravention of s. 126 as well as s. 128 of the LPA; that the defendant had already paid part of the bill in a total sum of RM52,000 by several payments and had thereby admitted the bill as debt.

[16] The collateral proceedings to set aside the taxation order was dismissed by the same learned JC. In his grounds of judgment, the learned JC held that the plaintiff had not appealed against the decision for taxation dated 14 July 2014 and had in fact actively participated in the taxation proceedings; that the issues raised in the application were similar to the issues raised at taxation proceedings and *res judicata* applied because the court had no right to review its own decision. The avenue opened to the plaintiff accordingly was to appeal against that taxation order.

[17] Before us, the plaintiff had emphasised that the application made by the plaintiff are collateral proceedings to set aside the impugned taxation order. It was made in reliance on the principle of law as laid down by the Federal Court in *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393, and s. 44 of the Evidence Act 1950.

[18] The principle of law enunciated in *Badiaddin (supra)* as we understand it, is that, where an order of the court is made in breach of statutes, or without jurisdiction, it may be declared void and may be set aside in proceedings brought for that purpose. Any order by the court that is made *ultra vires* or beyond the permitted limit under the statutes, obtained by fraud or abuse of court process, is a nullity *ab initio*.

[19] The allegation of breach of statutory provisions by the plaintiff was anchored on the argument that the taxation order had been issued in contravention of the various provisions of the LPA. The part of the LPA which deals with recovery of legal costs and taxation of bill of costs is found in part IX. We note that s. 116 allows for an agreement between a solicitor and a client for costs in respect of a contentious business like in this case. There is a clear agreement made between the plaintiff and the defendant on the fees *vide* the letter of appointment of the plaintiff by the defendant. The defendant had never denied agreeing to the fees as stated in the letter appointing the plaintiff dated 19 January 2010 upon the terms that we have earlier alluded to in para. 4 above. It is also amply clear that under s. 117(3) the agreed costs made pursuant to s. 116 of the LPA shall not be subjected to taxation. The taxation order made on the agreed fees pursuant to s. 116 would, therefore, be in contravention of s. 117(3) of the LPA. The learned JC had consequently erred in allowing an agreed costs under s. 116 to be taxed in the first place. We agree with the learned plaintiff's counsel that on this ground alone, this appeal should be allowed.

[20] It is also to be noted that the pre-agreed costs by the parties in this case are known as success fees, and not contingency fees because the agreed 15% fees are not contingent upon the defendant winning the case but it were additional fees agreed, in addition to the RM20,000 basic fees. This position taken by the plaintiff is in accord with the finding of the disciplinary committee under the LPA. The High Court in *Chai Chee Chin & Ors lwn. Tetuan Zahari Ong & Co* [2006] 8 CLJ 84 had recognised such success fees.

[21] It was also the case of the plaintiff that the impugned taxation order offended s. 126 of the LPA as it was made outside the time limit stipulated in that section. Section 126 sets out the time limit of six months from the delivery of a bill of costs, for taxation. No order for taxation should be made after expiration of that period except under special circumstances and this is set out under s. 128(1) of the LPA. In any event, no taxation order shall be made after the expiry of one year as provided in s. 128(2). The petition by the defendant on the second bill of costs was in fact, made two years six months and nine days after the second bill of costs was delivered to her. This fact was not disputed by the defendant.

[22] For the defendant, the main thrust of the argument was that the avenue opened to the plaintiff was only by way of an appeal process, which the plaintiff had failed to do. The defendant contended that the court is not seized with an inherent jurisdiction to order taxation of a bill of costs outside one

year of its delivery to the defendant. Learned counsel submitted that the learned JC had the inherent power to order taxation of a bill of costs even outside the time frame stipulated by the statute as in this case. In support of that proposition, learned counsel referred us to *Phuah Choon Hwang & Ors v. Hassan & Kong Yeam* [1986] 1 CLJ 513; [1986] CLJ (Rep) 579; [1987] 1 MLJ 156. In that case, the High Court had relied on the English case of *Symbol Park Lane v. Steggles Palmer (a firm)* [1985] 2 All ER 167, which dealt with s. 70(3) of the Solicitors Act 1974 of England. Under that section, it is provided that if an application for taxation is made after 12 months, no taxation order shall be allowed. To be noted also that there is no express provision for an extension of time stipulated both in LPA as well as the Solicitors Act. In *Symbol Park Lane*, however the English Court allowed taxation because of special circumstances. The High Court in *Phuah Choon Hwang* applied the principle as enunciated in the English case of *Symbol Park Lane* and found special circumstances present, to justify allowing a taxation order outside the time limit. In applying that principle, the court in *Phuah Choon Hwang* had at the back of its mind the question of whether or not there was injustice which required the exercise of an inherent jurisdiction of the court.

[23] Learned counsel for the defendant further cited and relied on the decision of this court in *Tan Tek Sin & Anor v. Tetuan Nora Hayati & Associates (sued as a firm)* [2015] 1 CLJ 89; [2015] 2 MLJ 1 to contend that a bill of costs can be taxed even after one year. Not only that the bill was taxed even though one year had lapsed in that case, the court also had the authority to make an order for a more detailed bill of costs to be issued according to learned counsel.

[24] We have carefully examined the decision of this court in *Tan Tek Sin & Anor (supra)*. Central to the issue in dispute in that case was that the bill of costs was excessively exorbitant and disproportionate to the legal work expended by the solicitor. On its facts, the court had also found that the engagement of the solicitor was for an uncomplicated court order. It was merely for a letter of administration in respect of an estate. Such application would entail the preparation and filing of an originating summons together with supporting affidavits and affidavits of consent by all the beneficiaries. There was no explanation by the solicitors on the exorbitant fees. Furthermore, the bill showed a lump sum of RM600,000 without itemising or particularising the legal work done. On these circumstances, the court had found *prima facie* special circumstances established, which demanded the invocation of its inherent jurisdiction. Having found that the bill was 'astronomical to say the least and does not commensurate with work done' the court was of the view that justice of the case required that such bill be taxed and such special circumstances merit the invocation of its inherent jurisdiction. It was also for that same reason that the court had ordered for a detailed bill of costs to be issued.

[25] There was no such dispute in the present case on the amount of fees presented in the bill of costs since it was based on agreed costs. The bill of costs in this case was properly itemised and the case of *Tan Tek Sin & Anor* does not lend any support to the case of the defendant in urging this court to exercise any discretion in her favour. There were also no special circumstances shown or proven by the defendant. The defendant had in fact, paid a total payment of RM52,000 in several payments to support a case of a clear admission on the bill as debt due. It was never the defendant's case that the taxation order made by the learned JC, though out of stipulated time, could be justified on the ground of special circumstances. There was in fact no evidence of special circumstances adduced before the trial judge. On the contrary, this is a case of a client who agreed to pay fees which were certain and then reneged on her words after succeeding in her claim. Unlike *Tan Tek Sin & Anor*, there was no issue of an exorbitant bill or unconscionable bargain as raised and found in *Tan Tek Sin* to warrant judicial intervention. Even her attempt of a complaint to the disciplinary authority was not on the issue of an exorbitant bill. Far from complaining, she had even paid part of the bill.

[26] The participation of the plaintiff in the proceedings cannot validate an invalid order. It is axiomatic that the plaintiff has to obey any order of a court no matter how defective or bad until it is so set aside. It has been a long – established principle as decided by the Supreme Court case of *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210 that a person is duty-bound to obey a court order till it is set aside. This is premised on the underlying principle of duty of obedience and it is not for the plaintiff to decide for himself that any order of the court is wrongly issued, because the failure to obey runs the risk of contempt.

[27] Before we end we note that, learned counsel for the plaintiff had raised issues with the decision of the learned JC on his failure to make any finding or ruling in relation to s. 44 of the Evidence Act 1950. Learned counsel contended that his application to set aside the impugned taxation order was made by invoking the inherent jurisdiction of the court as well as s. 44 of the Evidence Act 1950.

[28] Section 44 deserves to be quoted in full to understand the full breadth of its implication. It provides as follows:

> Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party was delivered by a court not competent to deliver it or was obtained by fraud or collusion.

This section simply gives right to a party in a suit or proceedings to raise any of the following three grounds in relation to an order of a court:

(a) that the order was delivered by a court not competent to deliver it; or

(b) that the order was obtained by fraud; or

(c) that the order was obtained by collusion.

[29] The scope of s. 44 above is to allow a party to a suit or other proceedings to avoid the effect of a judgment or any order of a court on any of the three grounds cited in that provision. It is a permissive provision that allows impeachment of judgment which is a nullity by proving either of the three grounds exists. This provision is contained in the part of the Evidence Act which deals with the relevancy of judgment or order of a court. It is for the purpose of allowing a party in a proceeding to adduce evidence or to prove to the court that the judgment or order is obtained by the wrongful or illegal way. It is neither a provision that provides a remedy nor does it confer on the court the authority or jurisdiction on how to deal with such impugned judgment or order. This is understandable because it deals with the right of a party to raise relevant evidence. The recourse opened to the plaintiff to set aside any wrongful order lies in the rule as enunciated by the Federal Court in *Badiadin*. Section 44 is supplemental to that rule and it deals with the right to adduce evidence for that purpose.

[30] It is also settled law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But, *Badiadin* has allowed a special exception to this rule. It is where the final judgment of the High Court could be proved to be null and void on the grounds of illegality or lack of jurisdiction which is the plaintiff's pleaded case herein.

[31] While it is true that there is no appeal filed against the taxation order, the learned JC was plainly wrong to have considered no appeal as a ground of dismissing the plaintiff's application. The law is trite and clear that if an order is bad in law, the aggrieved party may apply to set aside the said order without appealing on the same.

[32] In conclusion and for all the above reasons stated, we agree with learned counsel for the plaintiff that this case warrants appellate intervention as the learned JC was plainly wrong in dismissing the collateral proceedings by the plaintiff premised on illegality of the taxation order. We agree that the impugned taxation order was made in excess of jurisdiction as it contravenes s. 117 as well as s. 128 of the LPA and ought to be set aside. In the circumstances, we allowed the appeal with costs and set aside the taxation order of the High Court.